IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 126 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANSUKHALAL CHHAGANLAL RAMI - Appellant(s)
Versus
FATESING UMEDSING CHAUHAN & 2 - Defendant(s)

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Appearance :
MS KRUTI VORA FOR MR KH BAXI for Petitioner No(s).: 1.
NOTICE SERVED for Respondent No(s).: 1.
MR MD PANDYA for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date : 11/08/2005

ORAL JUDGMENT

1. This appeal arises out of a judgment and award passed in Motor Accident Claim Petition No.206 of 1982, by Motor Accident Claims

Tribunal(Main), at Bhavnagar, by a common judgment rendered in Motor Accident Claim Petitions No.206 and 243 of 1982, on 31st July, 1984. The appellant herein was claimant in Motor Accident Claim Petition No. 206 of 1982 and had claimed an amount of Rs.70,000/-, by way of compensation, on account of injury sustained by in in a vehicular accident that occurred on 10th August, 1982, at about 3.15 A.M., near Salpara Nala, near Vallabhipur village, on Ahmedabad-Bhavnagar highway, involving S.T. Bus No. GRR 8614. The claimant-appellant was travelling in the bus. He claimed an amount of Rs.70,000/- on account of personal injury. According to him, he had injuries on his head, which resulted into permanent partial impairment in hearing to an extent of 37.6 per cent in both the ears. He underwent treatment for a long time from various doctors.

2. The case of the other side was that of denial. The Tribunal, however, took into consideration the evidence led by the petitioner-appellant and awarded an amount of Rs.21,150/-, as compensation, as per details given in paragraph 14 of the judgment, as under :-

Rs. 1,000/-for purchase of medicines and medical treatment.
Rs. 600/- for nursing costs.
Rs. 300/- for special diet.
Rs. 500/- for transport charges.
Rs. 750/ for past economic loss.
Rs. 6,000/- for prospective economic loss.
Rs.12,000/- for personal loss.

Rs.21,150/-
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3. Aggrieved by the said judgment and award, original claimant has preferred this appeal for enhancement of the amount of compensation.

4. Learned Advocate, Ms. Kruti Vora, for the appellant submitted that the Tribunal committed an error in assessing damages on account of future loss of income, actual loss of income and compensation for the expenditure on medical treatment. She submitted that, as per medical evidence, the appellant sustained permanent impairment in hearing to an extent of 37.6 per cent in both the ears. The Tribunal, without taking all these aspects into consideration, awarded only an amount of Rs.6,000/- under the head of future loss of income (prospective economic loss). She submitted that the income of the claimant, at the time of the accident, was Rs.1,000/- per month and 37 per cent of the said amount would come to Rs.370/- per month and, looking to the age of the claimant, a multiplier of 15 should have been adopted, which would entitle the claimant an amount of Rs.66,600/-, as against Rs. 6,000/- awarded by the Tribunal. She submitted that the appeal may, therefore, be allowed.

5. The appeal is opposed to by learned Advocate, Mr. Pandya, on behalf of the respondent. He submitted that the award was also challenged by the respondent by preferring First Appeal No.1107 of 1985. He, however, submitted that the said appeal came to be dismissed by a Division Bench of this

Court, by order dated 4th September, 1985. Mr. Pandya submitted that, if the evidence is examined, the claimant has failed to establish that the deafness was relatable to the injuries claimed to have been sustained by him in the incident. He also submitted that the claimant was working as a labourer and there would be no economic loss, as such, because of the impairment in hearing. He submitted that the Tribunal has taken into consideration all relevant aspects and, therefore, the appeal may not be entertained.

6. This Court has taken into consideration rival side contentions. At the outset, it may be noted that the appeal preferred by the respondent came to be dismissed at the admission stage itself by a Division Bench of this Court.

7. So far as merits of this appeal are concerned, it is challenged mainly on the ground of insufficiency of amount of compensation under the head of future loss of income, actual loss of income and medical expenditure.

7.1 So far as actual loss of income is concerned, it is amply clear from paragraph 11 of the judgment that, even as per the say of the learned Advocate for the claimant himself, the claimant would be entitled to a compensation of Rs.750/- under the head of actual loss of income. It also appears from the evidence that the claimant was immobilized for a period of about 20 days and that his income was Rs.1,000/- per month. In the opinion of this Court, therefore, no fault can be found with the Tribunal when it has awarded

compensation of Rs.750/- as compensation under the head of actual loss of income.

7.2 So far as compensation under the head of medical expenditure is concerned, it would be appropriate to note that, as per the claimant, he had spent Rs.5000/- for purchase of medicines and medical treatment. However, he did not produce any evidence in support of this claim of his. But, relying on the fact that the claimant was examined by three private medical practitioners and the fact that Dr. Patel testified that the applicant had paid Rs.340/- for treatment and investigation, the claimant is awarded Rs.1,000/- under the head of expenditure on medicines. Here again, the incident is of 1982 and, in the opinion of this Court, the Tribunal has assessed the quantum in a just and reasonable manner. No interference, therefore, is required in this regard as well.

7.3 Now, coming to the question of compensation under the head of future economic loss, the Tribunal has observed that the claimant was working with Arbuda Mills and was drawing a consolidated salary Rs.900/-, around the time of the accident and was earning Rs.1246/-, as consolidated salary, around the time when he was examined by the Tribunal. As such, there is no economic loss suffered by the claimant. The contention that was raised before the Tribunal was that, after his retirement, because of the deafness, the claimant may have difficulty in getting work. The Tribunal considered that

there was no injury on the legs or hands of the applicant and that he will be able to carry on work. The Tribunal also considered that there is some deafness in the left ear of the claimant and he may suffer some economic loss on account of the deafness in future, as he would have a weak case in the employment market after his retirement. Accordingly, the Tribunal assessed economic loss at Rs.50/- per month and, by adopting a multiplier of 10, awarded an amount of Rs.6000/- under the head of prospective economic loss.

7.4 In this regard, it would be appropriate to note that the evidence led by the claimant does not, in any manner, relate the deafness to the accidental injury except his bear words. The doctor nowhere states that it was the accidental injury which has caused deafness to the claimant. On the contrary, the doctor says that, on examination, he found ear, nose and pharynx normal. There was only scar over the scalp. Audiometry test was carried out and the audiogram showed bilateral sensoriural hearing loss moderate in amount. The doctor stated that the applicant would be able to hear the sounds, but, at times, he may miss exact words.

7.5 Considering the evidence led by the claimant-appellant and the appreciation by the Tribunal, in the opinion of this Court, no interference is called for. It cannot be overlooked that the claimant was working with Arbuda Mills and would have continued till superannuation. It also appears that he was working as a labourer and the deafness would not result into that kind of

impairment which would have direct impact on his vocation. Despite that, the Tribunal has considered that he may have some difficulty in getting work after retirement and has awarded a compensation of Rs.6000/- under that head. In the opinion of this Court, the amount, therefore, cannot be said to be under-assessed or unjustly low particularly when there is no medical evidence to show that the deafness was relatable to the accidental injury. The appeal must fail and is dismissed. No costs.

[A. L. DAVE, J.]

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